

IN SENATE OF THE UNITED STATES.

MARCH 2, 1846.

Submitted, and ordered to be printed.

Mr. NILES made the following

REPORT :

[To accompany bill S. No. 100.]

The Committee on the Post Office and Post Roads, to whom was referred the petition of Thomas Rhodes, submit the following report :

That the committee have examined the claim of the petitioner, and present a statement of the facts on which his claim is founded. During the session of Congress in 1828, a resolution was passed, "authorizing the Postmaster General to cause to be examined the route from Mobile to Pascagoula, and if, in his opinion, it should be the most expedient route to the city of New Orleans, he shall be, and hereby is, vested with full power and authority to adopt that route in lieu of the present one from the city of Mobile to New Orleans." In pursuance of this authority, the Postmaster General, on the first of August, 1828, wrote to the postmasters at New Orleans and Mobile, requesting them to examine said route, and report to him their opinion whether its establishment as a mail route would advance the public conveniences. They were required to ascertain the distance, to examine the quality of the ground, to estimate the probable expense of opening a good road for stages, to ascertain the time that would be saved in conveying the mail between the two cities, and the expense of three weekly trips. An examination of the route was made by the postmasters aforesaid, and a report made and forwarded to the department, before the 6th day of October, 1828, and on that day the Postmaster General acknowledged the receipt of the report, and informed the postmaster at New Orleans that it was entirely satisfactory, and subsequently informed the postmaster at Mobile that the joint report met his entire approbation. It being understood, either from an advertisement of the department, or from information obtained from the postmaster at Mobile or New Orleans, that the Postmaster General wished to contract for conveying the mail from Mobile to New Orleans, by Pascagoula bay, the petitioner, for himself and Jeremiah Austill, on the 10th of August, 1828, made a proposal in writing, for conveying the mail between the two cities, by way of Pascagoula, three times a week, each way. He offered to transport the mail for fourteen thousand dollars a year, but added that the road from Mobile to Pascagoula must be made by or at the expense of the United States; and then proceeds to say that he would make the road suitable for stages for four thousand dollars, and keep it in repair for four years, the term of the proposed contract.

On the 7th of October, a letter from the department informed the petitioner that his proposal for carrying the mail from Mobile to New Orleans by land and water, at the rate of fourteen thousand dollars per annum, was accepted by the Postmaster General, and requested him to begin with all practicable expedition to convey the mail upon a plan to be designated by the postmasters of Mobile and New Orleans. This acceptance of the proposal of the petitioner said nothing about that part of the proposal relating to opening the road. The petitioner and Austill commenced making the road, and had it completed so as to begin carrying the mail upon it on the 15th of December, 1828, and continued to carry the mail until the last of May, 1829. Failing to carry the mail according to their contract, the Postmaster General, on the 14th of April, 1829, advertised for proposals to let the route again, of which the petitioner was advised, but he continued to convey the mail until the last of May following, being one year and five and a half months that their service continued under this contract, during which the mail failed many times. The department paid them \$4,928 98, being \$324 89 more than they were entitled to receive, at the rate of compensation stipulated in their contract. Jeremiah Austill failed and left the country, and the responsibilities of the concern were thrown on to the petitioner, who made a claim upon the department for the expenditure he had incurred in opening the road to Pascagoula bay, which the Postmaster General declined to pay, alleging that he had no authority to apply the revenues of the post office department to an object of that kind; and informed the petitioner that he must look to Congress for relief. It appears that the road, or some part of it, was used for transporting the mail for some time, and that it has been of considerable public advantage.

The question presented by these facts is, whether, under the circumstances of the case, the petitioner has an equitable claim on the government to be remunerated for the expense he incurred in opening the road. He claims that his proposal for carrying the mail four years for fourteen thousand dollars per annum was connected with a condition, which from the nature of the case, could not be separated from it, namely, that the United States was to open the road, or agree to pay him four thousand dollars for doing it. The Postmaster General adopted or established the mail route by Pascagoula, and accepted the proposal of the petitioner for carrying the mail upon it, without saying anything in regard to that part of the proposal of the petitioner which related to opening the road, although he must have known that the mail could not be conveyed on that route without the road being opened. Did not the acceptance by the Postmaster General of that part of the proposal of the petitioner which related to carrying the mail, which he knew could not be performed without the road being first opened, authorize the petitioner to believe that if he constructed the road, he would in some way be paid for it? It appears to the committee that it did, and that there was an implied or tacit engagement that the petitioner was in some way to be remunerated for his expense in opening the road. It does not appear, from any of the correspondence, that the department ever claimed or expected that the contractors were to construct the road at their own expense. Was it just, or strictly honest, in the government to accept one part of a proposition for a contract, consisting of two parts, when they knew that the part accepted could not be performed without the other part was also agreed to; and when they had reason to believe that the part accepted would not have been offered but in connexion with the part which

was not accepted ? The committee are of opinion that the petitioner has an equitable claim to be reimbursed the money he has expended in opening the road, being three thousand five hundred dollars ; but as he appears to have been overpaid for carrying the mail to the amount of \$324 89, they deduct that sum from the amount of the claim, leaving \$3,175 11, and report a bill for paying him that sum from the treasury.

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